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Supreme Court, U.S.  
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JOSEPH F. SPANIOL, JR.  
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CASE NO. 89-369

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

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DANIEL L. PARRISH, Petitioner

vs.

SHELVA P. JOURNIGAN, BRUCE G.  
JOURNIGAN, T. YATES DOBSON, JR.  
JAMES W. NARRON, Respondents.

\*\*\*\*\*

ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

\*\*\*\*\*

BRIEF IN OPPOSITION OF  
RESPONDENTS SHELVA P. JOURNIGAN  
AND BRUCE G. JOURNIGAN

\*\*\*\*\*

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130pp



QUESTIONS PRESENTED

- I. WHETHER SPECIAL AND IMPORTANT REASONS  
EXIST TO WARRANT THIS COURT'S REVIEW  
ON PETITIONER'S WRIT OF CERTIORARI.
- II. WHETHER THE UNITED STATES COURT OF  
APPEALS FOR THE FOURTH CIRCUIT ERRED  
IN DETERMINING THAT THE DISTRICT COURT  
LACKED SUBJECT MATTER JURISDICTION  
OVER PETITIONER'S COMPLAINT.

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MEMORANDUM

1887

TO THE HONORABLE SECRETARY OF THE  
NAVY  
FROM THE HONORABLE SECRETARY OF THE  
NAVY  
SUBJECT: [Illegible]

RE: [Illegible]

1887

FOR THE HONORABLE SECRETARY OF THE NAVY

CASE NO. 89-369

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

\*\*\*\*\*

DANIEL L. PARRISH, Petitioner

vs.

SHELVA P. JOURNIGAN, BRUCE G.  
JOURNIGAN, T. YATES DOBSON, JR.  
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\*\*\*\*\*

JURISDICTIONAL STATEMENT

Petitioner, a Virginia resident, brought this action in the United States District Court against four North Carolina residents. The jurisdictional grounds claimed by Petitioner appear to include diversity of citizenship, 28 U.S.C. §1332(a) and federal question, 28 U.S.C. §1331, although Respondents submit that neither claimed basis supports federal jurisdiction.

STATEMENT OF THE CASE

Petitioner's Complaint as to Respondents Journigan sought damages and a determination that his mother's will was invalid due to undue influence of these Respondents and lack of testamentary capacity. The Petitioner's Complaint also alleges that the Executrix Shelva Journigan acted improperly in conducting the estate's affairs. Petitioner was a



named party to a caveat proceeding relating to the subject will in the North Carolina General Court of Justice, Superior Court Division, Johnston County, yet he did not appear at the proceedings. The jury determined that the will was valid. An accounting for all receipts and disbursements is subject to approval by the Clerk of Superior Court.

The Statement of the Case by Respondents Dobson and Narron is incorporated herein by reference as to the remaining proceedings relating to the Petition.

#### SUMMARY OF ARGUMENT

Special and important reasons do not exist to warrant this Court's review on the Petition for Writ of Certiorari. The Petitioner's complaint pertains to matters of probate and estate administration which are outside the scope of federal jurisdiction and which fall within the

exclusive jurisdiction of the state probate court. The Fourth Circuit's ruling so holding is overwhelmingly supported by the applicable authorities.

#### ARGUMENT

I. SPECIAL AND IMPORTANT REASONS DO NOT EXIST TO WARRANT THIS COURT'S REVIEW ON PETITIONER'S WRIT OF CERTIORARI.

The absence of any issues appropriate for review by this Court is so apparent from the face of the Petition that Respondents will not burden this Court with any lengthy argument. It is fundamental that:

A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor . . . .

Sup. Ct. R. 17(1). The character of reasons that this Court is to consider in determining whether to exercise its discretion in reviewing a case on writ of certiorari include:

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court. Sup. Ct. R. 17(1).

The Petition fails to show any grounds for review. The basis for dismissal of Petitioner's lawsuit does not involve a substantive or genuine federal question. The present action does not involve a

decision by a federal court of appeals in conflict with the decision of another federal court of appeals on the same matter. The Fourth Circuit's decision has not departed from the accepted and usual course of judicial proceedings so as to call for an exercise of this court's power of supervision. As no special and important reasons exist to review this matter on writ of certiorari, this Court should decline to exercise its discretion to review the Fourth Circuit's decision dismissing Petitioner's action on jurisdictional grounds.

II. THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT CORRECTLY DETERMINED THAT THE DISTRICT COURT LACKED SUBJECT MATTER JURISDICTION OVER PETITIONER'S COMPLAINT.

In his pleadings, the petitioner seems to be seeking a determination that his mother's will was invalid due to undue influence and lack of testamentary capa-

city. He also seeks removal of the attorneys representing the estate in ongoing probate proceedings in state court. It is well-settled that matters of probate and estate administration are excluded from federal jurisdiction and fall within the exclusive jurisdiction of the state probate court. Markham v. Allen, 326 U.S. 490, 66 S.Ct. 296, 90 L.Ed. 256 (1946); Foster v. Carlin, 200 F.2d 943 (4th Cir. 1952); Johnson v. Stephenson, 269 N.C. 200, 152 S.E.2d 214 (1967); Rice v. Rice Foundation, 610 F.2d 471 (7th Cir. 1979). The Fourth Circuit properly applied the established law in affirming the dismissal of Petitioner's action on jurisdictional grounds.

#### CONCLUSION

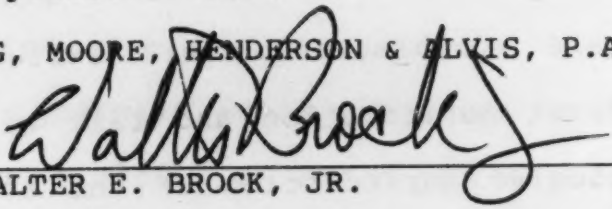
There are no special and important issues justifying review of this matter on

writ of certiorari and, therefore, this Court should deny the Petition.

Respectfully submitted, this 22  
day of September, 1989.

YOUNG, MOORE, HENDERSON & ELVIS, P.A.

BY:

  
WALTER E. BROCK, JR.

BY:

  
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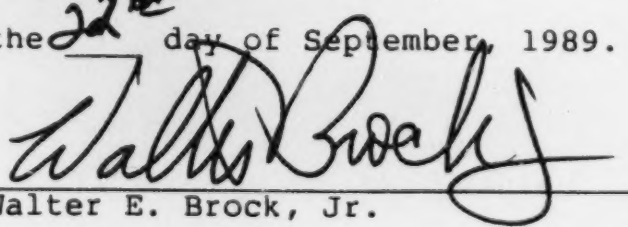
CERTIFICATE OF SERVICE

The undersigned attorney for Respondents Shelva P. Journigan and Bruce G. Journigan hereby certifies that on this day three copies of the foregoing Brief in Opposition of Respondents Shelva P. Journigan and Bruce G. Journigan was served upon the parties in this action by depositing them in an appropriate wrapper, in a United States Post Office or mailbox, with first-class postage prepaid, and addressed as follows:

Daniel L. Parrish  
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Counsel for Respondents  
Dobson and Narron

This the <sup>22<sup>nd</sup></sup> day of September, 1989.

  
Walter E. Brock, Jr.